IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 127 of 2004
With
COMPANY PETITION No. 248 of 2004
To
COMPANY PETITION No. 252 of 2004
With
COMPANY PETITION No. 167 of 2004
With
COMPANY PETITION No. 128 of 2004
With
COMPANY PETITION No. 154 of 2004
With
COMPANY PETITION No. 155 of 2004
With
COMPANY PETITION No. 191 of 2004
With
COMPANY PETITION No. 226 of 2004
To
COMPANY PETITION No. 229 of 2004
With
COMPANY PETITION No. 247 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAAHIL ORGANICS PVT.LTD. - Petitioner(s)
Versus
SUNTEX INDUSTRIES PVT.LTD. - Respondent(s)

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Appearance :
MR PAVAN S GODIAWALA for Petitioner(s) : 1,
NANAVATI ASSOCIATES for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 08/03/2006

COMMON ORAL JUDGMENT

1. Heard Shri Pavan Godiwala, learned advocate appearing on behalf of the respective petitioners and Shri Saurabh Amin, learned advocate for M/s Nanavati Associates for the respondent company. All these petitions are filed by the respective petitioners under Section-433, 434 and 439 of the Companies Act, 1956 for an appropriate order for winding up of respondent company i.e. SUNTEX INDUSTRIES PVT. LTD.

2. It appears from the record that the petitions are filed for winding up the company for their dues aggregating to Rs.1,75,88,249/- as claimed in the respective petitions and the first petition came to be filed and notice was issued on 7.5.2004. It is the contention on behalf of the respective petitioners that they have time

and again demanded the amount due and payable to them but the respondent company has neglected to make the payment and thereafter, they were constrained to serve a statutory notice upon the respondent company and in spite of service of the statutory notice the amount was not paid and therefore, the petitioners have preferred the present petitions.

3. It is the contention of the learned advocates appearing on behalf of the respective petitioners that the company on various occasions have assured the petitioners to pay their respective dues and even the respondent company filed its reply to the petition No.127 of 2004 and even the Managing Director of the respondent Company of the respondent company filed an undertaking before this Court dated 30.3.2005, by which, the company through the Managing Director has specifically undertaken that 50 % of the total outstanding principal amount to each of the

petitioners / creditors will be paid within a period of 45 days from that date and even the respective petitioners also accepted the same in full and final settlement of their claim. It appears from the record that the company has not complied with its assurance and undertaking given before this Court. It is also further submitted by the learned advocates for the petitioners that even the amount as assured and as undertaking by the respondent company has not been paid and company has neglected to pay its debts and thereby has failed to honour its commitments.

4. This Court admitted the petitions on 24.1.2005 and ordered advertisement of the petitions in the local newspapers. However, at the request of the company, this Court passed order on 8.2.2005 not to publish the advertisement till 21.2.2005. It appears that on 21.2.2005 the order came to be passed to

implement the earlier order for advertisement and the petitioner company of Company Petition NO.127 of 2004 published the advertisement in Indian Express (English), Ahmedabad Edition and Gujarat Mitra (Gujarati), Surat Edition both dated 24.2.2005.

5. It appears from the record that thereafter petitions came to be heard by this Court on various occasions and it is the contention of the respective petitioners that the company has given various promises and assurances to the petitioners for making payment. However, the respondent company has not fulfilled its promises and assurances and not a single amount is paid. It is submitted by the learned advocates appearing on behalf of the respective petitioners that few cheques which were issued by the respondent company are also dishonoured. Therefore, it is submitted that as the company has neglected to pay its dues and the company has

lost its financial substratum, the respondent company is required to be wound up.

6. After advertising the petition as stated hereinabove, the order of admission was advertised on 24.2.2005. It appears that since after admission of the petitions and advertisement of the admission, the respondent company has not done anything. It has neither paid the dues of the petitioners, nor it has settled the matter. It has not come out with any affidavit that the company is profit making company and nor has discharged its liability and debts. On the contrary, the cheques which were issued in favour of the petitioners are bounced and are dishonoured and therefore, it appears that the respondent company has failed and neglected to pay its dues and the company has lost its financial substratum and therefore, the respondent company is required to be wound up.

7. For the reasons stated above, all the petitions are allowed. The respondent company is directed to be wound up. The official liquidator attached to this Court is appointed as official liquidator for the respondent company. The Official Liquidator is hereby asked to take possession of the properties (movable and immovable) of the respondent company immediately along with its bank accounts, cash and accounts books etc after recording inventory. The Official Liquidator shall submit his report within a period of three months. If required, he can take services of the Official Valuer for the purpose of preparation of possession note and other inventory etc..

8. These petitions are accordingly disposed of. No costs.

[M.R.Shah, J.]

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